

Comments and Responses to the BHA FY 2015 Annual Plan Amendment #2.

The following document contains the comments and responses received on the BHA's FY 2015 Annual Plan Amendment #2. The Plan was put out for public comment on August 10, 2015 and the comment period closed on September 24, 2015 with a public hearing held September 16, 2015 at 125 Amory Street in the first floor training room with the first hearing held at 1pm and another later that same day at 6 pm.

The BHA took several steps to notify the public of the FY 2015 Annual Plan Amendment #2 and the opportunity to comment. The BHA placed an advertisement in the Boston Globe and mailed out flyers to public housing resident organizations notifying them of the Public Hearing and the proposed Plan Amendment. The BHA also sent letters to many local officials and advocacy groups. The Plan was made available for review at BHA's headquarters at 52 Chauncy St., and on its website www.bostonhousing.org.

Reasonable Accommodation Policy

9/16/15 Public Hearing Comments

Comment: First of all, service animals cost money. They cost

money to raise. They cost money to care. They cost money. So, it would seem reasonable for someone with a service animal [inaudible phrase 09:17] deduction because many, many people with disabilities who require service animals, living in public housing, either don't work and are on SSI, SDI, or they do work but [inaudible phrase 10:10]. Having a service animal is quite pricey. For example, I used to have a dog. I used to have my Husky. We were spending about \$60 a month on food for him and another \$20 for his healthcare needs as he got older. My family used to work. They ran a restaurant business. So, they could afford having a dog. Service animals, there is much more care to them. You need to groom them almost every day. You get specialized animals, too, unlike your ordinary dogs. They work with [inaudible 13:11] together. Essentially, the dog can be seen as [inaudible phrase 13:33]. So, imagine if you were blind and needed a service animal to live independently. In our housing [inaudible phrase 14:20] and you pay a subsidy for the housing. You work maybe 20 hours a week. Food for yourself is expensive too. [Inaudible phrase 15:20] I think this policy makes sense because you're helping the residents save money for a lot of needs, including medical expenses too. Now, the person might get Medicaid or Medicare

– Medicare Part C or D. Still the person has to pay for his or her medication. When you take under consideration that people with disabilities take more medications; that can cost maybe \$25 per month. So, by deducting the cost of a service animal, you're putting that same money into the pockets of the consumer, of the tenants who live in the buildings, who requires service animals. I think the policy is justifiable. It's not hurting the BHA because the people living in public housing who have service animals are much more [inaudible phrase 19:22]. These are some [inaudible 19:35] why I believe [inaudible 19:50] is the correct call. Thank you very much.

Response: Thank you for your comments. BHA is happy to be putting a finalized assistance/service animal policy into place to help clarify the rights of Clients when it comes to the keeping of such animals. As this is a new policy, once implemented, BHA will welcome any feedback from Clients and the advocacy community regarding ways to clarify and improve it. Please see below for some specific comments that have already come in and which have already resulted in alterations to the policy.

Comment: The [Reasonable Accommodation Review Committee] - who would be sitting at that to make decisions?

Response: Thank you for your question. The RARC consists of the Director of Civil Rights, Reasonable Accommodation Coordinator, a designee of the Director of Civil Rights (currently the Civil Rights Policy Manager), and a designee of the Administrator (currently an Assistant Director of Property Management).

Comment: Once [the RARC has] made a decision, does that mean the end-all for that individual once you guys make a decision on it?

Response: Thank you for your question. Once the RARC issues a decision on whether a proposed RA denial, the department proposing the denial has to abide by that decision. If the denial is allowed to go forward, the Client would still be able to appeal it internally as was the case before the creation of the RARC.

Comment: I just wanted to say I think [the RARC]'s an awesome idea – streamlining, make it available for everybody, make it just... Streamline it for everybody to understand it; I think it's best for the tenants. I think it'll be user-friendly. As you know, BHA can sometimes be a little hard to traverse, so I appreciate it and I hope you're listening. Thank you very much.

Response: Thank you for your comment. BHA hopes the

RARC will help make the processing of RA requests a bit easier to understand through small steps such as suggesting simpler language for use when a department is communicating with a Client about his/her RA request in order to get more information. BHA remains open to suggestions from Clients and advocates on further ways it can make the RA process more easily understood.

Comment: Just a few things: One, we really like what BHA has done on the Reasonable Accommodation review process. We have yet to see exactly how that rolls out. We know it's happening but, because you don't see it, you don't know what happened to something because of it, depending on what the final thing is. It's hard to analyze it exactly. We do appreciate that the Authority has started that process and think that it will result in better outcomes for people.

A couple of things just to mention: I think there's still a live question about this "too late for reasonable accommodation." I understand that that's a bit of an issue between Office of Civil Rights, perhaps, and the public divisions of the Authority and sort of a [distance] between trying to have some finality to Authority decision making versus not. But typically what might happen would be someone, let's say, does not

get a hearing request with the Housing Authority [inaudible 27:09] fashion. The Division of Grievances and Appeals has a current procedure on that which talks about compelling circumstances for somebody to submit something, like sometimes there's an address problem or there are family circumstances that come up. Typically what's happened is that, sometimes, if stuff simply comes in too late, particularly on the Section 8 side, if someone's HAP contract has gotten terminated, the Authority has, in the past, issued a series of decisions which say, "You are no longer a client of the BHA and, since you are no longer a client of the BHA, basically you're outside the purview of the BHA." We would respectfully ask that the Authority continue to look at that issue, primarily the HUD context for applicants [inaudible phrase 28:12] for reinstatement of applicants where reasons they were removed have to do with a disability. [Inaudible phrase 28:24] so, for example, if, a year later, somebody were able to come up with the documentation that showed, "I understand they sent me out a letter, but I have some documentation to prove that I was hospitalized at that particular period of time," or, "I have cognitive problems and, so, without the help of healthcare or a family member, I really wouldn't have gotten what was going on and now I

have that.” HUD’s been pretty clear about that we do reinstatements in that situation, so the concept would be that same idea exists really for somebody who’s a participant or a voucher holder – it really shouldn’t end.

I understand that I may be preaching a little bit to the choir on this question. A common thing that comes up a lot of times with cases that are getting reviewed by Occupancy, Division of Grievances and Appeals, Leased Housing, even Operations prior to the development of [inaudible 29:35] is there may be a mix of what are called “mitigating circumstances” and reasonable accommodation issues. Sometimes people can get a little hung up about which box it goes in, what exactly it is. There have been some court decisions around this. There’s a case called [Inaudible 29:56] versus the Lynn Housing Authority, which came out of the appeals court back in 2006, which presented the idea that, there, the Hearing Officer said, “I understand there’s a reasonable combination issue here. I didn’t actually have to reach that because I concluded that, because of the mitigating circumstances involved here, I was going to give the person a second chance around getting their voucher reinstated,” and there they did some anger management stuff that the person was participating in. So,

the Hearing Officer said, basically, “I understand there was a reasonable combination argument there. I didn’t have to rule on it.” I think that’s actually going to become fairly common; it is fairly common in a lot of situations with Occupancy, with Leased Housing and so forth. It should be that, under the policy, if the various divisions or departments of BHA are able to resolve something favorably without having to get through all this reasonable accommodation analysis, that’s fine. They don’t need to take up the Committee’s time, the department’s time, et cetera. You’re only going to need to get into this at the point where mitigating circumstances weren’t enough and then you were getting on to the next sets of issues.

One thing on the service animal issue is I know there’s some language in the policy that distinguishes between the service animals and the support animals. The way it’s drafted, though, at least one of our commenters in our office thought people might read it and if they, in fact, also got some support from their service animal, therefore they didn’t qualify, they might read it that way or interpret it that way. You know, let’s say that someone, for example, has a seeing eye dog but, also, the family treated it as being emotional support in some way or another. You wouldn’t want

somebody to think, because of that, they couldn’t pursue the claim. You might want to just look at the language that’s on that.

Finally, on this issue about – I’m sorry, not finally; I have one more point. On the rent deduction issue: it’s a little tricky. Here’s my understanding of how the law works on this. On the public housing side, BHA has the ability to do rent deductions that are beyond what HUD and DHCD require. And, so, they can, and in fact have, given rent reductions for extraordinary medical expenses for non-elderly and non-disabled households. So, basically any family in public housing – extraordinary medical expenses in excess of three percent of income are deductible. The same is not true on the Section 8 side because HUD doesn’t give the Housing Authority that discretion. While many households may in fact qualify for the deduction because it is an elderly or disabled household in which a spouse or sole member is elderly or disabled. That’s not always true. Sometimes it may be that the house with the person with the disability is a child or is an adult disabled household member who’s not been in the household, or spouse. There, then, is another route that HUD gives you for disability assistance expenses which you could possibly use in some of

those cases, but that has to be related to employment. So if, for example, it was your adult nephew who was living in the house, was going to work, and was using a seeing eye dog to do that, if it's in that way, it comes in comfortably that way. The way the Authority wrote this, though, makes it look like the rent deduction is sort of just there for anybody on the public housing side or the Section 8 side. I wish that were so, but it's not, unless BHA could possibly get a BHA waiver around this, which would be wonderful. But I don't know that you can do that. Just a thought on that particular one, and I agree with [Inaudible phrase 34:23] comments about this issue.

Then just the very last issue is, when the old Reasonable Accommodation policy was written back in 2000 by a combination of BHA staff and Debbie Piltch, who was a consultant who used to work at the Disability Law Center, the policy did not address what happened with cases that were in court because that was, essentially, [inaudible 35:00] territory. Since that, the SJC has ruled, in the case of BHA versus [Inaudible 35:08], that there certainly are obligations that happen when cases are in court and it comes to the Housing Authority's attention that there is a disability. So, there may be a question of, "What's the procedure you're

wanting to use, then?" My understanding is – the Authority wrote this as, "The court will tell us what to do." My bet is the court would love it if you would tell them what you think should happen because the more that they've got something to look at and to say, "Here's what's going to happen," for example. It comes up in court. Does that mean that the Authority would then say to a judge, "Judge, give us a couple weeks. We'll do an internal process on this. We will get back with you and either tell you, 'Here's what we're willing to do,' or 'We just don't think we have enough here to support it.'" It may be worth some thinking about exactly how you approach those. I think the court itself would definitely look for guidance to the Authority about what their preference would be, what's going to be more workable, rather than always kicking it to a judge.

Those are just some brief thoughts. There will be lots more written stuff on this, but I understand we have until the 24th, if I'm not mistaken, for written comments.

Response: Thank you for the above comments and for following up by submitting the totality of the written comments regarding the policy, which may be found below. As each issue raised at the public hearing has been raised below in more detail, BHA will respond to them in the next section.

Written Comments

Comment: In General: Shouldn't the policy also cover **Reasonable Modifications** (RM)? Section 2.1 (p. 2) seems to indicate that Reasonable Modification is a sub-class of the broader term "RA", but not everyone will understand that, and it would make sense to entitle the overall policy in a way that it's clear that both RA and RM are covered. BHA says in 1.2.1, n.2 (p. 2), that it would just refer to the Joint Statement of HUD and DOJ on Reasonable Modification, which makes sense for the private owners of Section 8 units, but the policy should address where BHA has Reasonable Modification responsibilities.

Response: Thank you for your comment. BHA's decision to not use "reasonable modification" throughout the policy alongside "reasonable accommodation" also stems from concerns about confusion. BHA staff, clients, and many local health/service providers have become familiar with the terms "reasonable accommodation" and "RA" over time but still often need assistance with fully understanding what the concepts entail. BHA is concerned that substantially introducing "reasonable modification" into the policy may further complicate understanding, whether this is ideal or not. The use of "RM" also appears to be somewhat subordinated to uses of "RA"

outside of the agency as well. Multiple HUD regulations use “reasonable accommodation” as a catch-all term and BHA notes that to reach HUD’s FHEO webpage links to information on reasonable modifications, one must first go to the page on reasonable accommodations.

Despite not using the term “reasonable modification,” the actual concept has not been neglected and is found throughout numerous sections of the policy, particularly in examples. That being said, please see the edits to Section 2.1, the insertion of Footnote 2, and the change of Section 1.2.1 to Section 2.1.1 that have been made in hopes of providing some additional clarification on the subject as well as organization.

Comment: 1, n. 1: If there is a separate policy that applies to RA and RM for **BHA employees**, there should be a reference to where that policy can be located. In addition, there may be issues where **vendors or contractors** have RA/RM issues (for example, under Section 3), and whatever guidance/policy exists on this should be cross-referenced.

Response: Thank you for your comment. Upon re-review, footnote 1’s language regarding employees has been removed so as not to detract from the purpose of this policy.

Comment: 1.2: Does the term “**Applicants**” include persons who applied but were removed from the waiting list? HUD Section 8 regulations, for example, provide that PHAs are to reinstate persons purged from the waiting list if the purge was related to a disability (for example, person was hospitalized and didn’t respond to notice, or has a cognitive impairment and didn’t know what to do). See 24 C.F.R. § 982.204(c)(2). There is no outside time limit placed on this by the HUD regulations. Would the term “applicant” also cover a voucher holder who hasn’t entered into a Section 8 lease and HAP contract (that’s the way the term is used in Section 8 regulations)? Or should an additional term be used for that?

Response: Thank you for your comment. For purposes of the policy, “Applicant” includes persons who have been removed from a waiting list provided that they have submitted new applications for housing. If an individual has been removed from a Section 8 waitlist for failure to respond to a request for information or updates because of a family member’s disability, BHA will comply with the regulation cited.

“Voucher Holder” has been added as an additional term for those who have received a voucher but for whom a HAP Contract has yet to be executed. The rest of the policy

has been updated to reflect the addition of this term.

Comment: 1.2: For the term “**resident**”, what does the term “**lawfully residing**” mean? Some kind of color of right? Presumably it would NOT mean that RA/RM relief could be denied just because the BHA is claiming that it is entitled to proceed with eviction against the household. But it might mean that relief is not to be provided if the individual were neither ever a public housing leaseholder or an authorized remaining household member.

Response: Thank you for your comment. Yes, “lawfully residing” means to have rights under law to reside at the property.

Comment: 1.2: The term “**participant**” used here seems to be broader than the HUD term, and includes those issued vouchers who never were under a Section 8 lease or HAP contract. Presumably the term would include Section 8 participants under eviction, or where the HAP contract is suspended or terminated without fault of the tenant, and should include those where the BHA hasn’t issued a voucher because there are “good standing” issues but the person has some kind of claim to continued assistance. It is not clear from the terminology here if BHA will deny RA/RM claims for Section 8 households after the HAP contract terminated for

tenant fault (either because the family didn't timely request a hearing or lost a hearing decision) or any outside limit on such individuals seeking RA/RM relief (the question whether it is "too late" to seek such relief—see HUD regulations, above, on applicant reinstatement) BHA should also make clear that the term applies to its Section 8 Moderate Rehabilitation (Mod Rehab), Project Based Voucher (PBV), and Enhanced Voucher (EV) participants; the term "voucher" might not apply to Mod Rehab.

Response: Thank you for your comment. Please see the revised definition of "Participant" in Section 1.2. It now covers only those who are receiving subsidies through Leased Housing Division programs (including non-voucher programs such as Mod Rehab) and no longer makes mention of voucher issuance/holding. This brings the definition in line with that found in BHA's Section 8 Admin Plan.

For purposes of this policy, one would cease being a "Participant" when the HAP Contract is terminated, except in situations in which Leased Housing is required to provide Continued Assistance as described in the Admin Plan.

Comment: 1.2: The term "Client" should not be used in a way to deny RA/RM requests if

the BHA has ended participation for a household—see HUD comments, again, on reinstatement of applicant where there was a nexus between disability and removal. In addition, throughout, the term "Client" should include situations where the disability may be of an individual other than the leaseholder or head of householder (such as another authorized household member).

Response: Thank you for your comment. Sections 1.2 and 3.1 have been edited to further emphasize that RAs are not only for heads of household but may also be for household members.

Comment: Ch 1, Somewhere in the Chapter, there should be a discussion about how this applies to **Mixed Finance and privately managed sites**, but what may be different about those sites—i.e., that the request may first go to the private management entity, and at some sites, there may be unique RA policies or forms used at that site.

Response: Thank you for your comment.

Comment: 1.2.1, while it's generally true that BHA doesn't have RM duties with regard to participants, there may be cases where it's a mixed responsibility. For example, assume that someone in a PBV unit over time has access issues, and needs to be

transferred to a unit that doesn't have accessibility barriers—but the particular PBV site doesn't have appropriate units. It would be appropriate for BHA to place this person on a different PBV list or issue a tenant-based voucher. So this likely needs to be spelled out further.

Response: Thank you for your comment. Please see the new language added to Section 2.1.1 (formerly 1.2.1) to refer to the further-expanded Section 6.2. Section 6.2 now makes mention of the options that may be available for those in the PBV and Mod Rehab programs when a private landlord is not able to accommodate a Participant's needs.

Comment: 2.2: The examples of reasonable accommodation focus mainly on physical changes and needs. It would help to include more examples involving behavior related to mental disability (such as failure to recertify, lease violations, etc.) People don't always know that RA goes beyond the narrow examples provided in the policy. BHA should consider developing Frequently Asked Questions (FAQs) on RA, with input from advocates, which would include mental disability issues and the nexus between that and denial of eligibility and/or termination of tenancies or assistance.

It would also help to include as an example of reasonable accommodation, in the

applicant context, where the applicant might be denied because of criminal history but there was a link between the disability and the criminal history (for example, former substance abuser in recovery, or a person who acted out when not on medication who has subsequently stabilized).

Response: Please see the additional examples added to Section 2.2. Note that of the eight original examples, at least four could apply to individuals with mental disabilities, even if the request required changes of a physical nature.

Additionally, BHA currently has a reasonable accommodation FAQ section at www.bostonhousing.org and is open to input on ways to improve it. The questions and answers will be re-examined following approval of this policy.

Comment: 2.3: This makes it appear that the interactive process is only at the outset. However, the interactive process might also encompass BHA's proposing an alternate accommodation if the one proposed by the client BHA thinks may not be reasonable, may be overly burdensome, or may not adequately address its concerns.

Response: Section 2.3 has been expanded to recognize that the interactive process includes discussions of alternative accommodations.

Comment: 2.4: May be helpful to be explicit here with regard to Mixed Finance units, i.e., the same principle about "no cost on the Client". May also be helpful to be explicit about when cost of transfer/relocation would be borne by the Client and when BHA or Mixed Finance owner would have to absorb such costs.

Response: Thank you for your comment.

Comment: 3.1.2, "otherwise qualified": It may be helpful, here or elsewhere, to flesh out the examples of essential requirements, such as paying rent on time or keeping the unit up to State Sanitary Code requirements. Thus, for example, in public housing it is permitted to pay rent in two installments per month for good cause shown; if a tenant or participant receives an SSI payment mid-month, this might be cause for a reasonable accommodation for payment to be due on a date other than the 1st of the month. Most Sanitary Code requirements are imposed on the owner, and it is only a limited number of areas where the tenant is responsible for Sanitary Code compliance (for example, housekeeping issues).

Response: Section 3.1.2 now includes examples of essential program requirements and an example of a Client requesting a reasonable accommodation in

order to become program compliant.

Comment: 3.2, "nexus": Many applicants and participants won't understand the term "nexus", and there should be a common-sense explanation. It would be helpful to get feedback and examples here. For example, it may be that the disability is not that of the head of household nor does it have a direct relation to a program violation (for example, wrongdoing son engaged in drug-related criminal activity, but mother was unable due to her disability to take effective action to control or remove him, or had to focus attention on needs of other children with severe disabilities). Another example might be having an overnight guest for too many nights, where the head of household was unable, due to her disability, to effectively regulate the number of nights that the guest stayed, or unable to force the guest to leave.

Also under this point, but generally: In a number of cases, program violation issues may be addressed by Occupancy/Leased Housing, property managers, or Division of Grievances and Appeals (DGA) by application of mitigating circumstances without reaching the question of whether a RA/RM is required—see discussion in Wojcik v. Lynn Hous. Auth., 66 Mass. App. 103 (2006), where anger management issue was noted

as a potential RA issue, but because of proposed resolution, hearing officer did not need to engage in full-blown RA analysis), and if a case can be successfully resolved that way, fine. Similarly, in a case where the Division of Grievances and Appeals is considering whether a late hearing request or the rescheduling of a missed hearing is warranted, DGA or Leased Housing may elect to waive issues of timeliness or not get into a full blown RA analysis but simply grant the request. However, if mitigating circumstances aren't found to be enough, there would then need to be a separate RA assessment.

Response: Thank you for comment. Section 3.2 has been redrafted with the intention of further clarifying the “nexus” requirement. Section 3.8 has been added to address the relationships between requests for RAs and the consideration of mitigating circumstances.

Comment: 3.3.1, “undue financial or administrative burden”, and 3.3.2, “fundamental alteration”: Here or elsewhere, it would help to have examples of what would and would not be “undue financial or administrative burdens” and “fundamental alterations”. For example, the fact that BHA normally requires that all rent be paid to process an application or transfer is not “fundamental” where an accommodation can be

proposed that would safeguard BHA’s interests; asking that BHA indefinitely waive rent payment obligations for the future, on the other hand, would be a fundamental alteration. The fact that BHA software may not be able to generate a second means of notice (to communicate with a social worker or advocate working with a Client) does not mean that it is an “undue” administrative burden.

Response: Thank you for your comment. Regarding undue financial burdens, it is difficult to include examples due to HUD’s guidance that one is to look at the entire resources of the agency (which are significant) when evaluating financial burden. The one example that comes readily to mind of an undue financial burden arises from a scenario that is too specific for the policy: During sequestration, had BHA issued new vouchers (including Super Priority Vouchers for those in need of accommodation), it would have been cut off from additional HUD funding for other vouchers. BHA would argue that that would rise to the level of being an undue financial burden.

Regarding undue administrative burdens, BHA would need a request that uses up considerable administrative resources at the agency in order to deny it for that reason; it is difficult to think of an

example that would be worth including in the policy.

That being said, please see the additional guidance included in Section 3.3.2 for “fundamental alterations.”

Comment: 3.5.3: This provides that BHA requests for additional information from a Client will be in writing and provide a reasonable deadline for responding. There should be some time frame specified within which BHA must send notice that it is seeking more information. Prompt response (with flexibility to address case-by-case situations) is a two-way street.

Response: Thank you for your comment. Section 3.5.3 now includes language that BHA will make best efforts to request any necessary additional information within twenty (20) calendar days from the date of the RA request.

Comment: 3.7: Several of these examples are misleading. There is nothing in federal or state law that says that persons who are juvenile offenders or sex offenders are not entitled to RA, and including the status that “if his/her status as a juvenile offender or sex offender is the sole basis for the request” is somewhat confusing and may be liable to lead to individuals not requesting relief (or proper requests being denied). Both of these are different than 3.7.3, current

illegal use of controlled substances, which is based on specific exemption language. As to the issue of “current use” and whether recent enough, I believe that state law provides some outside limits here, but there may be a case by case determination that more recent use may still not be “current” as the person is in recovery. On the “direct threat” language, this too is based on a statutory exemption and was precisely the issue in Boston Hous. Auth. v Bridgewater, 452 Mass. 833 (2009), where the Court said that before BHA concluded that a tenant should be evicted because he was a threat, it was required to engage in the interactive process and determine whether he would be a threat if there were a reasonable accommodation (there, resumption of medication and therapy that stabilized behavior).

Response: Thank you for your comments. The subsections regarding juvenile offenders and sex offenders have been removed due to the raised and shared concern about having a chilling effect on requests. Note, however, that these originate from pg. 4, question 4 of the 2004 Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations under the Fair Housing Act. The BHA will continue to use the Joint Statement’s guidance therein for requests in which

Clients claim sex offender or juvenile offender status as the sole bases for RA requests.

Comment: 4.1: Here again, there may be cases where what the client has asserted would raise both issues of reasonable accommodation and mitigating circumstances. If the information is enough to convince BHA to exercise discretion based on mitigation to not deny the applicant, or to not proceed with eviction or termination of assistance, or to permit a late hearing request or a rescheduled hearing as noted above, it should not be necessary for BHA to engage in a full-blown RA assessment—but if consideration of mitigating factors (or waiver of strict enforcement of appeal periods) was not sufficient to convince BHA to grant the relief, then the more detailed RA review would be necessary.

Response: Thank you for your comment. Section 3.8 has been added to address the relationships between requests for RAs and the consideration of mitigating circumstances.

Comment: 4.2: The first sentence should say that a person seeking a RA need not use BHA forms to make a request. If a person wishes to use the forms that BHA has, BHA will provide them in the person’s language, will read the forms to the client if s/he is not literate, etc.

Generally: It would be helpful to say what the process is for Mixed Finance or BHA privately managed sites. In some cases, there may be both a process with the private owner or management company, as well as some ability for recourse to the BHA, and it would help both owners/managers and residents to be clear on how this should work.

Response: Thank you for your comments. The wording of Section 4.2 has been altered to further emphasize that the BHA’s forms are not required to request an RA. The existing language regarding assistance with the forms has been expanded as well to mention that guide versions of the Request for Reasonable Accommodation form are available in Spanish and Chinese.

Comment: 5, Generally: As noted above, it would be worth discussion how this relates to exercise of discretion on mitigating circumstances, in case it may be that such consideration would resolve the matter without the need to engage in a full RA assessment.

Response: Thank you for your comment. Section 3.8 has been added to address the relationships between requests for RAs and the consideration of mitigating circumstances.

Comment: 5.1: As drafted, this only covers situations where the finding of ineligibility is based on something related to the disability. But it may be that the disability was not directly related to substantive ineligibility, but merely with the applicant's inability to respond to the BHA in a timely way (to get in verifications or to understand what was being requested). This should be drafted in a way that it's clear that this is covered as well.

Response: Thank you for your comment. Section 5.1 has been edited to include situations in which an Applicant is found ineligible due to missing a screening or failing to provide necessary information in a timely manner as a result of a disability.

Comment: 5.1: This also uses the term "essential eligibility requirements", but there is no definition provided, and as with "undue financial or administrative burden" or "fundamental alteration", this could lead to erroneous decisions. In many cases, RA precisely requires some "bending", lowering, or waiving of what would normally be required, and so being clear on what can and what cannot be "bent" would help. It would be helpful, here or elsewhere, to be clear on what eligibility requirements are essential, and give examples of how this is applied. In addition, the language here about "provided

the Applicant is not determined ineligible based on other grounds as well" may cause some confusion. While it's true that simply acknowledging that RA may not address all concerns, and there may be others that aren't adequately addressed by the RA, in many cases, there may be multiple issues, but they are all related in some way to a disability. For example, a person may have a history of late payment of rent, disturbances resulting in negative references, and criminal history, all of which could be a basis for denial—but all of these may be related to a disability, and it may be that one or more accommodations can address these separate concerns.

Response: Thank you for your comments. Upon re-review, the language regarding waiving and lowering essential eligibility requirements has been removed as it reiterates what the policy already says earlier (and more accurately) about fundamental alterations. Section 5.1 has been edited to further clarify the language regarding situations in which an RA is requested for a finding of ineligibility but there are other non-disability-related reasons for finding the Applicant ineligible. Examples of essential eligibility requirements may be found in Section 3.1.2.

Comment: 5.2: It would be helpful to mention several things here:

Reference should be made to starting with the interactive process. For example, if BHA sends the tenant or participant a private conference or warning notice, suggesting a meeting, the meeting should be regarded not solely as the first step in the eviction/termination process, but as an opportunity to problem-solve with the client.

It may be that the proposed accommodation is not acceptable (because it wouldn't be likely to resolve the lease or program violation), but an alternate accommodation would be acceptable. BHA should be free to indicate, in its response, what alternate accommodation would be acceptable. For example, as in Andover Hous. Auth. v. Shkolnik, 443 Mass. 300 (2005), the resident may only have proposed discontinuance of the eviction, and the BHA may want to suggest use of technology (headphones, etc.) to insure that the TV sound level doesn't affect other residents.

Response: Thank you for your comment. Section 5.3 has been expanded to address BHA proposing alternative accommodations (when possible) in the context of adverse actions when a requested Accommodation is determined to be ineffective or unreasonable. The suggested example has been included.

Comment: If a client proposes an accommodation which BHA

finds to be satisfactory (for example, going to anger management counseling), and then the client doesn't follow through on the particular plan, BHA should NOT take negative action just because the client is not taking those steps, but instead should determine if the client is program/lease compliant. It may be that the client no longer needs the services/intervention. See discussion in HUD Occupancy Task Force report from the 1990's. However, if the client is not lease/program compliant, BHA may require more than just "I'll go back on the plan" to be convinced that the steps will be sufficient to address its concerns.

Response: Thank you for your comment.

Comment: 5.2.1: Note that this addresses the interaction between the court process and RA (an issue which was not addressed in the original policy, and was raised in BHA v. Bridgewater, supra), but all it says is that "BHA will expeditiously address the request in conjunction with the Housing Court action." However, it doesn't say exactly how this is done. It is likely that the Court would want to know, once an accommodation request has been made, how the BHA and the court should each proceed. We understand that this may come up in a variety of scenarios on both the public housing and Section 8

side, ranging from cases where the tenant has formerly raised a reasonable accommodation defense in the answer to an eviction case or sought assistance through the Tenancy Preservation Program (TPP) very early in the process, to cases where BHA was not made aware of the need for accommodation until the moving truck shows up—and many situations in between. Obviously a variety of responses may be warranted depending on the posture of the case and the underlying facts. It would make sense for BHA to stay proceeding with the eviction but it may be that appropriate injunctive relief or stipulations could be a condition of that. The court would want to know, before the case proceeds to trial, what's happened with the BHA/client interactive process.

Response: Thank you for your comment. As pointed out in the comment, there are many ways in which an RA may be requested and then addressed once a summons and complaint has been served. With an eye to keeping the policy simple, it would be near impossible to explain how BHA would approach them generally aside from "expeditiously." That being said, please see the edits to Section 5.2.1 explaining some of the options that may be available.

Comment: 5.3: There should be some discussion here about

the client's review rights and how proceeding with adverse action relates to the review. For example, it may be that the client refused the accommodation because it was a different accommodation than the one the tenant proposed, and this is an issue ultimately to be resolved through the grievance or informal hearing process. BHA is not entitled to proceed with court eviction, or with termination of assistance, if the denial of the tenant's reasonable accommodation request or the initial action is subject to administrative review. See 24 C.F.R. § 8.53(b) (grievance rights regarding denial of reasonable accommodation). If the reviewed ultimately determines that BHA was correct, the client should still have the right to agree to the accommodation. Sometimes it may happen that the client obtains assistance during the review process and another accommodation is proposed that would address both the client's and the BHA's concerns.

Response: Thank you for your comment. Please see the addition of 10.1.1 which covers how failed DGA appeals (whether on the RA itself, an adverse action for which BHA proposed an RA to help resolve the matter, or both) will not remove offers of accommodations.

Comment: 5.4: HUD recognizes that a RA request

may relate to a program violation, but it also may relate to the ability to effectively communicate/participate in the process. For example, the client may not be claiming, for a fault eviction, that there is a RA defense, but that because she is agoraphobic, she should participate by phone in the grievance hearing rather than go downtown. Similar issues may arise with a request for a late hearing request.

RA should go beyond just asking why the client brought up a disability—that question provides no guidance. BHA staff could ask whether the client is asking for a RA (in layperson’s language, so that the client is likely to understand). BHA could also explain, in layperson’s terms, what “nexus” is and why they are asking for certain information (such as establishing a link), in a non-threatening, non-judgmental manner, so as to calm anxieties and fears that often arise in client interactions, and so that the client can try to get BHA the information needed, or direct the BHA staff member to others who are working with the client who can help get the needed information.

It may also be helpful to refer clients to other agencies, like the Tenant Advisory Project (TAP), TPP, Homestart, or GBLs, and that once these agencies have done some preliminary review, they may

help the client reframe the request so that it makes sense. (At times, as noted above, this may mean a withdrawal of a RA request and proceeding with addressing the BHA’s concerns in other ways, such as through presentation of mitigating circumstances or showing that a late appeal request is warranted for other reasons).

Response: Thank you for your comment. Section 2.2 contains an example of a person requesting that a meeting, conference, or hearing be held in an alternative time or location, or by alternative means such as telephone or email exchanges, as an RA. A new Section 7.3 has been inserted to further highlight that Clients may request that meetings, conferences, and hearings be held in alternative formats and locations as an RA.

Additionally, Chapter Section 5.4 now includes language requiring BHA staff to explain RAs to Clients in plain language when it is not clear whether or not an RA is being requested. The Reasonable Accommodation Coordinator will be available to train staff who find they have difficulty doing so.

Comment: 6.2: As noted above, there may be circumstances in which a change in units is required as a reasonable accommodation and BHA may have a role with this in addition to the owner. For

example, a participant in a PBV or Mod Rehab unit may not be accessible, and it may be that BHA should be taking steps to transfer the individual to a different project-based unit or issue a tenant-based subsidy as a RA.

Response: Thank you for your comment. Please see edits to Section 6.2.

Comment: 7.4: The provision here about sending copies of any future BHA notices to an authorized third party representative as well as the client is good, and responds to prior comments we’ve made. We’ve been told by BHA that this may be difficult, though, for certain types of bulk notices, and should check to see how this is implemented in software/ mailing programs (presumably this would be by staff identifying these cases and supplementing the software system with a third party notice sent out by staff).

Response: Thank you for your comment (note that Section 7.4 is now 7.5). BHA will be looking into ways to implement system changes so that our Client management software can automatically generate bulk letters to multiple addresses for one Client. Unfortunately, because of the way the software is constructed and the staff hours required for such a project, this is a change that will require considerable time to implement.

Comment: 7.5: It should be noted that there may be intersections between this policy and other policies. For example, it may be that the client is also a person of Limited English Proficiency (LEP), or is a victim of domestic violence, dating violence, stalking, or sexual assault covered by BHA's VAWA policy. Clients who are so affected should get the benefits of all related policies.

Response: Thank you for your comment (note that Section 7.5 is now 7.6).

Comment: 8.2: This discusses prolonged hospitalization/treatment due to disability for public housing residents. However, similar issues arise for Section 8 participants. While BHA is limited in the relief it can grant by HUD regulation (i.e., if all household members are absent for 180 days or more, the HAP contract must be terminated), BHA is free to provide continued participation. Sometimes what happens here is that there will be a "freeze" on participation, and once the individual is able to come out of treatment, s/he may ask BHA to issue a voucher. BHA has traditionally allowed this relief, rather than requiring participants to reapply, etc., if it's within a reasonable period (usually 12 months or less). Often this has come up where there have been substance abuse issues, and BHA may

want to review likelihood of program compliance as part of this. This may be worth including in Chapter 8.

Response: Thank you for your comment. Upon re-review, Section 8.2, which addressed the inclusion of RA rights notification on notices regarding the potential abandonment of public housing units, has been removed. This was done for the sake of simplifying the policy as the section dealt with an extremely specific situation's issue of notification. Please note, however, that removal of this section will not change BHA's approach to the notification of RA rights in potential abandonment situations. Chapter 8 has been retitled to "Chapter 8: Live-in Personal Care Attendants."

Comment: Ch. 8, Generally: BHA may also want to add language, here, or elsewhere, that it can retroactively adjust rent if there was a loss of income, where the disabled person could not make the request immediately due to disability and/or hospitalization. This may not be limited to this circumstances discussed in Chapter 8. BHA usually requires that any downward adjustment in rent due to income loss is effective as of the same or next month as when the client brought the changed circumstances to its attention, and therefore cannot grant retroactive relief where there was delay in reporting.

There should be an exception, and retroactive relief should be available, if the failure to timely report is traceable to a disability (for example, cognitive issues, and the matter was only cleared up where an advocate or family member got involved).

Response: Thank you for your comment.

Comment: 9.1.1: There should be a time requirement or format required for BHA to represent to the client that it has received and is considering the request. It may be that the client has submitted a request but BHA doesn't have it or it hasn't been forwarded to the appropriate place (for example, it may be at DGA and should be reviewed by Leased Housing, or vice versa, or the client may have a fax cover sheet indicating receipt but hasn't received anything further). There have also been times where BHA staff may not have considered a submission to be a RA request, but the courts or Civil Rights may have a different view. If the client is unrepresented or does not otherwise realize BHA is not processing the request and therefore doesn't take action on BHA's nonresponse, the request may be overlooked and the client stripped of the opportunity to pursue the RA request. A receipt or some sort of notification (with a date of receipt) showing that BHA received the request and is reviewing it would be helpful.

Response: Thank you for your comment. Following implementation of this policy, BHA will investigate the possibility of implementing a standardized receipt system for RA requests as it may be of benefit to both Clients and BHA.

Comment: 9.1.3: Any notice about appeal rights should include any time frames for seeking appeal with DGA. (It's probably not realistic to think that this will include time frames for court or HUD/MCAD/OFHE review). This should also use BFHC's new name, which is the City of Boston's Office of Fair Housing & Equity.

Response: It is BHA's practice to include deadlines in its notices of appeal rights; Section 9.1.3 has been updated to reflect this. "Boston Fair Housing Commission" has been replaced by City of Boston's Office of Fair Housing & Equity throughout the policy.

Comment: 9.2: We appreciate BHA's adoption of this new system for internal review of proposed RA denials after a series of discussions between BHA staff and legal services advocates from GBLS, TAP, Harvard Legal Aid Bureau, and the Volunteer Lawyers Project (VLP) earlier this year. It should also be made clear that this also applies to action by DGA. Thus, for example, if a client submitted a request for a late hearing based on RA grounds, and DGA determines

that this is not appropriate, this would be subject to RARC review. This may be what 10.2.1 below is saying, but not sure given the way it's written. (Again, if Leased Housing, Operations, or DGA were to decide to grant a late hearing request based on mitigating circumstances without a full blown RA assessment, this would not trigger this process.)

Response: Thank you for your comment. Additional language has been added to Section 9.2 for the sake of clarifying the RARC's relationship to DGA decisions. Upon re-review, Section 10.2 and its subsection 10.2.1, which addressed exceptions to the general RA appeal policy, have been removed from the policy.

Comment: As we have previously said, sometimes BHA has taken an overly stringent reading of who's eligible for RA relief, and that if a person has already been terminated, this person is no longer a client. BHA should not deny a RA request on the basis that it is "too late". As noted above, HUD recognizes that applicants who've been removed from the waiting list have the right to seek RA and reinstatement, sometimes years after they've been removed from the waiting list—and we don't see how there can be a principled distinction between applicants and participants/voucher holders. BHA should consider all such

requests. The relief that may be provided, obviously, may differ. For example, if a participant didn't timely appeal and was displaced from an assisted unit, it may not be appropriate to retroactively reinstate subsidy as a RA; it may, however, be appropriate to issue a voucher so that the person can search for other housing. If the BHA is unable to issue vouchers currently due to financial constraints (as happened in the past due to sequestration), relief might be to prioritize the client for voucher issuance when funding becomes available.

Response: Thank you for your comment.

Comment: 10.1: There's an Issue about how this should be handled in Mixed Finance and privately managed sites. BHA has been having an active discussion on standardizing the Mixed Finance grievance procedure. This is complicated because these are not necessarily BHA decisions, although it may ultimately involve BHA policies.

Response: Thank you for your comment.

Comment: 10.2: This isn't written as clearly as it could/should be. It's not clear what the distinction between 10.2.1(1) and 10.2.1 (2) is—it would appear that all such cases should be under 10.2.1(2), i.e., the department

that took the action should be consulted. Here again, if the particular Department decides to grant the request for late hearing (or to “waive” any objection as to the timeliness of the hearing request) just based on mitigating circumstances without engaging in any full blown RA analysis, that should be sufficient. It’s not clear what cases go into 10.2.1(1) that wouldn’t go into 10.2.1(2).

Response: Thank you for your comment. Upon re-review, Section 10.2 and its subsection 10.2.1, which addressed exceptions to the general RA appeal policy, have been removed from the policy.

Comment: Ch 11: Again, there’s the question of how BHA interacts with Mixed Finance and privately managed sites.

Response: Thank you for your comment.

Comment: 11.2: Is there any tracking of the RA requests (for example, control numbers, or ways to be able to say, statistically, how many RA requests were handled by BHA in a given year, on what issues, and how they were handled?) BHA can do this for LEP requests, and it would likely make sense to do this, just like BHA can track what DGA has handled. It may also help in identifying resource/budget needs, timeliness of processing, etc.

Response: Thank you for your comment. Currently there is no centralized tracking system for tracking RAs; it is a more difficult task than with LEP requests as it would require creating a separate tracking process for the request which would be independent of the departments who are actually processing the requests. This is quite unlike the situation with LEP and DGA who are merely tracking matters routinely handled by their respective departments.

Comment: Ch 12: Depending on the answer to the Mixed Finance and privately managed development issues, the training and information should include private managers and Mixed Finance owners. It may also be helpful to make this training or information available for residents/participants who are interested, such as those who are on the Grievance Panel, are active with the Resident Empowerment Coalition, Resident Advisory Board, etc.

Response: Thank you for your comment. Please see the addition of Sections 12.2.1 and 12.2.2 which provide for continuous training for Grievance Panel members and training upon request for Client groups respectively.

Comment: 13.2: This should make clear that the information would be available to a third

party with a proper release from the client.

Response: Thank you for your comment. Section 13.2 now includes a statement that this information will be available to a third-party representative with the Client’s authorization.

Comment: 13.3: This may need to also refer to grievance panel members’ access (they may not be BHA employees, but would have the obligation, as part of any grievance, to consider this information). Privacy Act provisions of G.L. c. 66A generally apply to grievance panel members.

Response: Thank you for your comment. Please see expansion of Section 13.3 to include Grievance Panel Members.

Comment: Appendix: It may be helpful to cross-reference the BHA’s public housing pet policies (and note that there may be different policies at Mixed Finance sites—again, not clear how this policy affects and/or is implemented at mixed finance and privately managed sites). Obviously assistance and service animals are not “pets”, but the issue of bringing into play RA issues may not arise if a family has a common household pet which should be approved under that policy. This is discussed at Section 7 (i.e., noting that pet deposit and breed/weight/height rejections

don't apply), but it may be good to include it earlier.

Response: Thank you for your comment. Appendix, Section 7 has been moved up and is now Appendix, Section 3. The section has also been expanded to emphasize that an animal a Client has always considered to be a "pet" may be covered under this policy, and now includes an example of such a situation.

Comment: Appendix, Section 2: It may be that the policy would also affect applicants, to the extent that an individual would be denied the opportunity to move into BHA-related housing because of the presence of an animal who's contended to be an assistance or service animal. This should also be drafted to make clear that the person(s) with disabilities may be a household member other than the head of household or leaseholder.

Response: Thank you for your comment. "Applicants" are now included in the policy so as to cover situations such as the one above and to also cover situations in which the original rent calculations are handled prior to housing. Appendix, Section 2 has also been edited to further clarify that RAs are not only for heads of household but may also be for household members.

Comment: Appendix, Section 3: The definition of service

animals says that "they are not intended to provide emotional support, well-being, comfort, or companionship." While these may not be the primary purpose of the animal, they may be, and often are, a secondary purpose. Specifically stating that the animals are not intended to have those other purposes may be confusing to people and may cause them to believe that if their animal does provide that benefit, that it would not qualify as a service animal. Some clarification of this may be beneficial.

Response: Thank you for your comment. Appendix, Section 4 (formerly 3) now includes additional language to clarify that service animals may provide emotional support, well-being, comfort, or companionship even if this is not their primary purpose.

Comment: Appendix, Section 2.1: The reference to a rent deduction should be to Section 8, rather than Section 7, of the policy. (See further comments below.) There may be instances, again, where there are additional Leased Housing issues, for example, where if a need for a particular service or assistance animal cannot be accommodated in one type of housing but could be accommodated otherwise, and BHA would be involved in authorizing switching to a different project-based site, or to a tenant-based subsidy, in order to assist with this.

Response: Thank you for your comment. Appendix, Section 2.1 has been edited to fix the incorrect reference. Please see the addition of footnote 21 to Section 2.1 to refer readers to the revised Section 6.2 of the RA Policy, which deals with options for moving Participants in situations in which their disabilities cannot be accommodated at the current unit.

Comment: Appendix, Section 6: The factor here about being housebroken should not an outright basis for denial, as opposed to being a factor. See Anderson v. City of Blue Ash, ___ F.3d ___, 2015 WL 4774591 (6th Cir. 2015). The "direct threat" language here is not a bar to particular breeds or sizes of animals, nor would this automatically bring into play undue financial/administrative burden. Instead, this would be a case by case assessment as to the risks for a particular animal

Response: Thank you for your comment. The first two situations in the list in Appendix, Section 6, which covers when BHA may prohibit a service animal, originate from 28 CFR 35.136(b). These regulations cover the general rules for service animals and provide for removal of a service animal if it is not housebroken. The case cited deals with a miniature horse, for which there are specific rules found in 28 CFR 35.136(i), and of which being

housebroken is listed as being a factor in determining whether the horse may be allowed as a reasonable accommodation. Appendix, Section 3, n. 13 has been expanded upon, however, to direct readers to 28 CFR 35.136(i) when analyzing a request for a miniature horse to be allowed as a service animal.

has been edited to reflect that whether or not one may receive a deduction for the expenses of his/her service/assistance animals depends on the Client's program's rules and refers the reader to the ACOP and Section 8 Admin Plan where the detailed rules for medical deductions may be found.

Please see the additional language added to Appendix, Section 6 to further emphasize that when an animal poses a direct threat, it is the *individual* animal that is being reviewed and not a general animal of the same breed or size.

Comment: Appendix, Section 8: The medical deduction piece is not quite drafted correctly. While Residents in public housing can seek the deduction as an extraordinary medical expense and/or a disability-related expense for any household member with a disability, the same is not true for Section 8 tenants. There, either the head of household or co-head must be a person with a disability (or elderly) or the matter must fit within disability-assistance expenses (i.e., necessary for employment. See 24 C.F.R. § 5.611. This is because while BHA is free to expand the definition of deductions for federal public housing (and has done so), it is not free to do so for the Section 8 program.

Response: Thank you for your comment. Appendix, Section 8